

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TIMOTHY WOODS,
Plaintiff,

v.

**DAVID A. CONOLY, and
KENNETH ARMSTRONG,**
Defendants.

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Case No. **2:07-CV-852-WHA-WC**

SUGGESTION OF DEATH

COMES NOW the undersigned, without entering a notice of appearance, and respectfully notices the Court as follows:

I. FACTS

1. The complaint in this matter was filed on September 21, 2007. See *Complaint* (Doc. 1-2), attached hereto as Exhibit A.

2. Service of process on Officer Armstrong was attempted by certified mail, and the return receipt was signed by Montgomery Police Department Cadet Bailey on September 27, 2007. See *Return Receipt* (Doc. 7), attached hereto as Exhibit B.

3. Montgomery Police Officer Kenneth M. Armstrong died in the line of duty on August 17, 2007, before this action was filed. See *Affidavit of Kevin J. Murphy*, attached hereto as Exhibit C. There is no other Montgomery Police Officer with the surname Armstrong.

4. Because this information might not otherwise have been made available to the Court and is clearly relevant to its consideration of this case, the undersigned respectfully submits the fact that Officer Kenneth M. Armstrong is deceased, and died before this case was filed.

II. MEMORANDUM OF POINTS AND AUTHORITIES

5. **Officer Armstrong Does Not Have Capacity to be Sued.** A party must have a legal existence as a prerequisite to having the capacity to sue or be sued. Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Roby v. The Corp. of Lloyd's, 796 F.Supp. 103 (S.D.N.Y.1992); Brown v. Fifth Judicial District Drug Task Force, 255 F.3d 475 (8th Cir.2001); and Youell v. Grimes, 203 F.R.D. 503, 509 (D.Kan.2001).

6. Officer Kenneth Armstrong died before the complaint was filed. A person who dies prior to the filing of a lawsuit is not a legal entity. Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Mizukami v. Buras, 419 F.2d 1319 (5th Cir.1969) (defendant's death extinguishes claim); Moul v. Pace, 261 F.Supp. 616 (D.Md.1966) (wrongful death suit brought after defendant died dismissed); Chorney v. Callahan, 135 F.Supp. 35 (D.Mass.1955) (purported action a nullity because a dead man cannot be named defendant in an action); and Pasos v. Eastern S.S. Co., 9 F.R.D. 279 (D.Del.1949) (person who dies prior to filling suit is not a legal entity).

7. Because a deceased individual is not a proper party, the action against Officer Armstrong is a nullity. Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Banakus, 290 F.Supp. 259.

8. **Rule 25(a)(1) Substitution Does Not Apply Here.** Further, Rule 25(a)(1) of the Federal Rules of Civil Procedure, which allows substitution for a deceased party does not apply here. Mizukami v. Buras, 419 F.2d 1319, 1320 (5th Cir. 1969)¹.

9. Rule 25(a)(1) "clearly contemplates that the party to be substituted has

¹ Decisions of the U.S. Court of Appeals for the 5th Circuit decided prior to September 30, 1981 are binding precedent in the 11th Circuit. Bonner v. Pritchard, 661 F.2d 1206, 1207 (11th Cir.1981) (en banc).

died subsequent to the commencement of the lawsuit.” Adelsberger v. U.S., 58 Fed.Cl. 616, 618 -619 (Fed. Cl. 2003), citing Mizukami, 419 F.2d 1319; Banakus, 290 F.Supp. at 260; Chorney, 135 F.Supp. 35 (complaint dismissed as a nullity because substitution of administrator ineffectual when defendant died before suit was filed); Moore's Federal Practice § 25.10, at 25-9 (2000); 7C Wright, Miller & Kane, Federal Practice and Procedure, Civil 2d § 1951, at 522 (1986); see also Hanberry v. United States, 204 Ct.Cl. 811, 1974 WL 5597 (1974). In this case, Officer Armstrong died prior to the filing of the action and thus substitution of any party in his stead would be inappropriate.

WHEREFORE, as an officer of the court, the undersigned hereby notices the Court of the foregoing, and suggests, on the record, that the death of Montgomery Police Officer Kenneth M. Armstrong occurred on August 17, 2007, before this action was filed.

Respectfully submitted this 26th day of November, 2007,

/s/ Allison H. Highley
Allison H. Highley (HIG024)
Associate City Attorney

OF COUNSEL:
City of Montgomery
Legal Department
Post Office Box 1111
Montgomery, Alabama 36101
(334) 241-2050 Telephone

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2007, I placed a copy of the foregoing in the United States Mail, first-class postage prepaid and addressed to: Timothy Woods, Montgomery City Jail, Post Office Box 159, Montgomery, Alabama 36101

/s/ Allison H. Highley
Of Counsel

Exhibit A

TIMOTHY WOODS

SS# 262-73-0393

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

REG. NUMBER # 09369002

MONTGOMERY, CITY JAIL

P.O. BOX 159 MONTGOMERY, AL 36101

Full name and prison name of
Plaintiff(s)

v.

DAVID A. CONOLY, PROBATION
OFFICER, DOWN TOWN PROBATION
OFFICE, MONTGOMERY,
ALABAMA 36101 OFFICER
ARMSTRONG, MONTGOMERY,
POLICE DEPARTMENTName of person(s) who violated your
constitutional rights. (List the names
of all the person.)

2007 SEP 21 A 9:58

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALACIVIL ACTION NO. 2:07CV852-WHA
(To be supplied by Clerk of U.S. District
Court)

I. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? YES ☐ No ☒
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES ☒ NO ☐
- C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff(s) TIMOTHY WOODS REG. NUMBER # 09369002

MONTGOMERY, CITY, JAIL P.O. BOX 159 MONTGOMERY, ALABAMA 36101

Defendant(s) DAVID A. CONOLY, PROBATION OFFICER

And OFFICER ARMSTRONG, RACIST, KU KLUX KLANSMAN

2. Court (if federal court, name the district; if state court, name the county)

MONTGOMERY, FEDERAL COURT, UNITED STATES

FEDERAL COURT, P.O. BOX 711, MONTGOMERY, ALABAMA 36101

I NEED
CIVIL RIGHTS F.B.I
AGENTS AND U.S. ATTORNEYS
TO COME SEE TODAY AND
GET ME OUT OF THIS PLACE!
TODAY! I NEED
S.O.S HELP! TODAY!

Jimmy Woods

SS# 262-73-0393
REG. NUMBER # 09369002

3. Docket number _____ N/A
4. Name of judge to whom case was assigned _____ N/A
5. Disposition (for example: was the case dismissed? Was it appealed? Is it still pending?) _____ N/A
6. Approximate date of filing lawsuit _____ N/A
7. Approximate date of disposition _____ N/A

II. PLACE OF PRESENT CONFINEMENT MONTGOMERY, CITY JAIL
P.O. BOX 159 MONTGOMERY, ALABAMA 36101

PLACE OR INSTITUTION WHERE INCIDENT OCCURRED AT HOME, IN
GEORGIANA, ALABAMA 36033 Rte 3 Box 23

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR CONSTITUTIONAL RIGHTS.

- | NAME | ADDRESS |
|--|--------------------------------------|
| 1. <u>DAVID A. CONOLY, PROBATION OFFICER</u> | <u>DOWN TOWN MONTGOMERY, ALABAMA</u> |
| 2. <u>OFFICER ARMSTRONG, MONTGOMERY, POLICE DEPARTMENT</u> | <u>MONTGOMERY, AL</u> |
| 3. _____ | _____ |
| 4. _____ | _____ |
| 5. _____ | _____ |
| 6. _____ | _____ |

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED ON THE 5/8/2007
DAVID A. CONOLY PROBATION OFFICER! OFFICER ARMSTRONG

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

ALSO; SUPPORTING FACTS!

GROUND ONE: DAVID A. CONOLY U.S. FEDERAL PROBATION OFFICER

DOWN TOWN, FEDERAL PROBATION OFFICE, MONTGOMERY, ALABAMA 36101

DAVID A. CONOLY, PROBATION OFFICER, SAID THAT I WAS NOT TAKEN; MY MENTAL, HEALTH; MEDICATIONS, BECAUSE I WAS TAKEN MY; MENTAL, HEALTH; MEDICATIONS, WHAT DOCTOR; PSYCHOLOGYS, MR. POWELL; AT THE GREENVILLE, ALABAMA; MENTAL HEALTH; CENTER! MEDICATIONS; THAT; DOCTOR, PSYCHOLOGYS, MR. POWELL, GIVE ME ONCE, A MONTH! AT THE MENTAL HEALTH; CENTER! IN; GREENVILLE, ALABAMA! DOCTOR POWELL, SAID THAT I CAN GET MY MENTAL; HEALTH, FUNDS CHECKS! BACK TODAY! AND I WAS GETTING MY MENTAL; HEALTH, CHECKS; ONCE A MONTH; FOR \$4,900.00 DOLLARS!

EVERY MONTH; THROUGH THE YEAR; I GET MY MENTAL
HEALTH; FUNDS CHECK; ONCE EVERY MONTH; THROUGH THE YEAR.
I NEED TO GET MY MENTAL, HEALTH; FUNDS CHECKS! **I**
NEED S.O.S HELP! TODAY! I NEED FOR THE U.S. ATTORNEY'S
HERE IN MONTGOMERY, ALABAMA; TO GET ME OUT OF
THIS PLACE! TODAY! AND WRITE ME BACK TODAY! I
NEED YOU TO HAVE THE FEDS TO COME GET ME;
OUT OF THIS PLACE! TODAY! BECAUSE DAVID A.
CONOLY, SAID THAT I CAN GO HOME, TODAY! OR TO
THE HALFWAY HOUSE! TODAY! I WAS AT MY MOTHER
HOUSE, IN GEORGIANA, ALABAMA AND DAVID A. CONOLY,
TOLD ME; HERE IS A CARD AND HE GIVE ME HIS CARD,
TO CALL HIM; WHEN I NEED TO TALK TO HIM! **FEDERAL**
COURT! I NEED FOR THE FEDERAL AGENTS OF CIVIL
RIGHTS HERE; IN MONTGOMERY, ALABAMA; TO COME
AND GET ME OUT OF THIS PLACE! TODAY! BECAUSE
DAVID A. CONOLY, IS A RACIST, KU KLUX KLANSMAN! BECAUSE
I SUPPOSE TO BE AT MY MOTHER HOUSE; IN GEORGIANA
ALABAMA, I NEED FOR THE U.S. ATTORNEY; HERE IN MONTGOMERY,
ALABAMA; TO COME GET ME OUT OF; THIS, MONTGOMERY, CITY;
JAIL! TODAY! BECAUSE I AM READY TO GO HOME, TODAY! I NEED
TO GET MY CLOTHES AND PROPERTY; FROM, MY MOTHER HOUSE AND
UNCLE HOUSE; IN GEORGIANA; ALABAMA TODAY! **I need S.O.S HELP!**
TODAY! I NEED TO GO HOME TODAY! I NEED THE CIVIL RIGHTS;

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place and manner and person involved.)

U.S. ATTORNEY'S; HERE IN MONTGOMERY, ALABAMA; TO COME SEE ME AND GET ME OUT OF THIS MONTGOMERY, ALABAMA; CITY JAIL! TODAY! I NEED TO GO HOME TODAY COME GET ME OUT OF THIS PLACE! TODAY! I NEED TO GET OUT OF THIS PLACE, TODAY! U.S. ATTORNEY; I NEED S.O.S HELP! TODAY

GROUND TWO: OFFICER ARMSTRONG, CAME TO MY MOTHER'S HOUSE, IN GEORGIANA, ALABAMA, AND TAKEN MY CAR; AND DRIVE MY CAR, TO THE MONTGOMERY, ALABAMA POLICE STATION; AND TO THE MONTGOMERY POLICE POUND!

SUPPORTING FACTS: OFFICER ARMSTRONG, HAD NO PROBABLE CAUSE; TO TAKE MY CAR AND DRIVE IT TO THE MONTGOMERY POLICE STATION, HERE IN MONTGOMERY, ALABAMA; OFFICER ARMSTRONG, HAD NO JURISDICTION TO COME TO GEORGIANA, ALABAMA ON THE 5/6/2007 AND COME FROM MONTGOMERY, ALABAMA, TO GEORGIANA, ALABAMA WITH DAVID A CONOLY, AND OFFICER ARMSTRONG, TAKEN MY CAR AND DRIVE IT TO THE MONTGOMERY, ALABAMA; POLICE STATION HERE IN MONTGOMERY, ALABAMA

GROUND THREE:

THEY ARE KU KLUX KLANSMAN, DAVID A. CONOLY! OFFICER ARMSTRONG!

SUPPORTING FACTS:

DAVID A. CONOLY AND OFFICER ARMSTRONG! HAVE NO PROBABLE CAUSE; TO HAVE ME IN THIS PLACE! THE MONTGOMERY, CITY, JAIL! OR, FOR, THESE, KU KLUX KLANSMANS; FOR TAKEN MY CAR! IN THIS CIVIL RIGHTS LAW SUIT, I AM ASKING, FOR \$100, MILLION DOLLARS, TODAY! IN CASH; TODAY AND A BUS TICKET TO GO HOME; TODAY! I NEED S.O.S HELP! TODAY! S.O.S HELP! TODAY! S.O.S HELP! TODAY! S.O.S HELP! TODAY! I NEED S.O.S HELP! TODAY! S.O.S HELP! TODAY!

Affidavit

SUPPORTING FACTS;

SWORN AFFIDAVIT OF TRUTH

THE MONTGOMERY POLICE STATION, OFFICER ARMSTRONG, HAD NO PROBABLE CAUSE, TO TAKE MY CAR, FROM MY MOTHER'S HOUSE, IN GEORGIANA, ALABAMA, AND DRIVE MY CAR TO THE MONTGOMERY POLICE STATION AND OFFICER ARMSTRONG, HAD NO PROBABLE CAUSE OR THE JURISDICTION, TO COME TO GEORGIANA, ALABAMA WITH DAVID A. CONOLY, PROBATION OFFICER AND OFFICER ARMSTRONG TAKEN MY CAR FROM MY MOTHER'S HOUSE! AND DRIVE MY CAR TO THE MONTGOMERY, ALABAMA, POLICE STATION HERE, IN MONTGOMERY! UNITED STATES FEDERAL COURT, I NEED TO GET MY CAR BACK, FROM OFFICER ARMSTRONG, AT THE MONTGOMERY, ALABAMA POLICE STATION! BECAUSE OFFICER ARMSTRONG, HAD NO JURISDICTION OR PROBABLE CAUSE TO COME TO GEORGIANA, ALABAMA, FROM MONTGOMERY, ALABAMA; WITH RACIST DAVID A. CONOLY AND THEY ARE KU KLUX KLANSMAN! OFFICER ARMSTRONG, IS A MONTGOMERY, ALABAMA CITY POLICE, OFFICER! OFFICER ARMSTRONG, HAD NO PROBABLE CAUSE, OR THE JURISDICTION, OR NO PROBABLE CAUSE, TO COME FROM MONTGOMERY, ALABAMA, TO GEORGIANA, ALABAMA, TO TAKE MY CAR TO THE MONTGOMERY, POLICE, STATION! AND TO THE POLICE POUND! OFFICER ARMSTRONG, KEPT! MY CAR! IN THIS CIVIL RIGHTS LAW SUIT I AM ASKING FOR \$100, MILLION DOLLARS, IN CASH! TODAY AND A BUS TICKET TO GO HOME; TODAY! I NEED THE CIVIL RIGHTS F.B.I AGENTS AND CIVIL RIGHTS U.S. ATTORNEY, TO COME AND GET ME OUT OF THIS PLACE! TODAY! BEFORE I GET KILLED; BY DAVID A. CONOLY, AND OFFICER ARMSTRONG! FEDERAL COURT, I NEED S.O.S HELP! TODAY! HAVE THE F.B.I AGENTS, AND THE U.S. ATTORNEYS, TO COME GET ME OUT OF THIS PLACE! TODAY! BECAUSE I SUPPOSE TO BE AT HOME! WITH MY MOTHER!

AF FIDAVIT

SWORN AFFIDAVIT OF TRUTH

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU.
MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

get Civil Rights U.S. ATTORNEY'S, TODAY! FOR ME AND
Civil Rights, F.B.I AGENTS; TODAY! FOR ME AND HAVE
them, to COME SEE ME TODAY! AND GET ME OUT OF
this PLACE; TODAY! I NEED S.O.S HELP! TODAY!
BECAUSE I DO NOT SUPPOSE TO BE IN THIS MONTGOMERY
CITY JAIL! I NEED TO GO HOME TODAY! I NEED THE

Civil Rights F.B.I AGENTS!

Timothy Woods

Signature of plaintiff(s)

And the U.S. ATTORNEY'S +
COME GET ME OUT, THIS PLACE! TODAY!

I declare under penalty of perjury that the foregoing is true and correct.

I TIMOTHY

Executed on 9/21/2007

(Date)

WOODS, SS# 262-73-0393

I did no WRONG

Timothy Woods

Signature of plaintiff(s)

to NO ONE IN MONTGOMERY,
ALABAMA OR NO WHERE!

RACIST DAVID A. CONOLY,
SAID I WAS GOING TO A HALFWAY
HOUSE; ABOUT A MONTH; AGO!

And I DO NOT SUPPOSE TO BE
IN THIS PLACE! I HAVE BEEN
in this place; FOR ABOUT; FIVE,

MONTHS! I ONLY TAKE MENTAL, HEALTH;
MEDICATIONS; BECAUSE MY GIRL, FRIEND; DIE,

IN A CAR, CRASH! SOMEWHERE AGO! I NEED

S.O.S HELP! TODAY! I NEED TO GO HOME;

TODAY! BECAUSE I FEAR FOR MY WELL BEINGS!

Civil Rights F.B.I AGENTS, And Civil Rights;

U.S. ATTORNEY, COME SEE ME TODAY! AND GET ME OUT OF THIS PLACE! TODAY! TODAY!

S.O.S
HELP!
TODAY!

TIMOTHY WOODS
REG. NUMBER # 09369002
MONTGOMERY, CITY JAIL
DRAWER 159
MONTGOMERY, ALABAMA 36101

MONTGOMERY AL 361

20 SEP 2007 PM 1 L

USA 41

TO: CLERK OF COURT
UNITED STATES FEDERAL COURT
P.O. BOX 711
MONTGOMERY, ALABAMA 36101

36101+0711

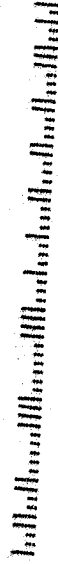



Exhibit B

Woods

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY						
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits <p>1. </p> <p>Officer Armstrong Montgomery Police Department P. O. Box 159 Montgomery, AL 36101</p>	<p>A. Signature <u><i>Cadit News Baily</i></u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>9-27-07</u></p> <p>ess different from item 1? <input type="checkbox"/> Yes elivery address below: <input type="checkbox"/> No</p>						
<p>2. Article Number <u>2:07C1852WHA</u> (as due 11/26/07) (Emp/Asdu/R+R)</p> <p>(Transfer from service la) <u>7007 1490 0000 0026 5070</u></p>	<p>3. Service type</p> <table style="width: 100%;"> <tr> <td><input checked="" type="checkbox"/> Certified Mail</td> <td><input type="checkbox"/> Express Mail</td> </tr> <tr> <td><input type="checkbox"/> Registered</td> <td><input checked="" type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td><input type="checkbox"/> C.O.D.</td> </tr> </table> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail	<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail						
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise						
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.						

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TIMOTHY WOODS, No. 09369002,
Plaintiff,

v.

DAVID A. CONOLY, and
KENNETH M. ARMSTRONG,
Defendants.

Case No. **2:07-CV-852-WHA**

AFFIDAVIT OF KEVIN J. MURPHY

STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

Before me, a Notary Public in and for said State and County, personally appeared
Kevin J. Murphy and, after first being duly sworn by me, did depose and state:

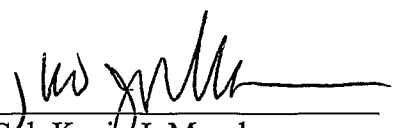
1. I am Lt. Col. Kevin J. Murphy and I am over nineteen years of age, have first-hand knowledge of the facts contained herein and am competent to testify thereto.

2. I am currently employed as Deputy Chief of Police for the Montgomery Police Department. As Deputy Chief of Police, I receive information on the facts and circumstances surrounding any incident where an MPD officer dies in the line of duty.

3. Montgomery Police Officer Kenneth M. Armstrong died in the line of duty on August 17, 2007.

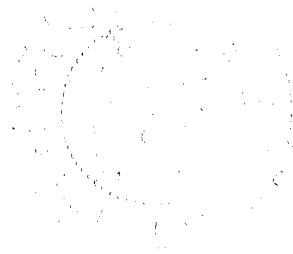
4. I have read this affidavit consisting of two pages and affirm that it is true to the best of my knowledge, information and belief.

Further Affiant saith not.



Lt. Col. Kevin J. Murphy
Deputy Chief of Police
Montgomery Police Department

SWORN to and SUBSCRIBED before me this the 21st day of November 2007.



Bonnie A. Robinson

Notary Public

My commission expires: 2-17-2010

NOTARY PUBLIC STATE OF ALABAMA AT Large
MY COMMISSION EXPIRES: Feb 17, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS